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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/847,670 | 05/02/2001 | Barry C. Finzel | 6263.N | 4815 |
| 26813 | 7590 | 03/26/2004 | EXAMINER | |
| MUETING, RAASCH & GEBHARDT, P.A. | | | SMITH, CAROLYN L | |
| P.O. BOX 581415 | | | ART UNIT | |
| MINNEAPOLIS, MN 55458 | | | PAPER NUMBER | |

1631

DATE MAILED: 03/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/847,670

Applicant(s)

FINZEL ET AL.

Examiner

Carolyn L Smith

Art Unit

1631

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 March 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
(a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☒ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 38-43 and 49-59.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: Attachment: Interview summary on 2/10/04

Continuation of 2. NOTE: Amended claims 42 and 49-52 raise a new issue wherein the crystal effectively diffracts x-rays to a resolution of 1.5 angstroms to 3 angstroms. New claims 60 and 61 raise a new issue wherein the crystal is about 0.12 x 0.12 x 0.05 m in size or 0.4 x 0.4 x 0.2 mm in size.

Continuation of 3. Applicant's reply has overcome the following rejection(s): The NEW MATTER rejection was withdrawn for claims 55-57, the 35 USC 112, 1st paragraph, written description rejections were withdrawn for claims 38-41, and the 35 USC 112, 1st paragraph, lack of enablement rejections were withdrawn for claims 55-57, that were filed 10/16/03..

Continuation of 5. does NOT place the application in condition for allowance because: The amendment includes amended claims 42 and 49-52 as well as new claims 60 and 61 that have subject matter not previously presented in examined claims that raise new issues. A further search would be required to address these issues.

If the amendment, filed 3/9/04, had been entered, the title of the invention would still be objected to (as the practice of rejoinder has not taken place for method claims which are still mentioned in the title); the 35 USC 112, first paragraph, lack of enablement rejection would be maintained for claims 42, 49-52, 58-59, and newly applied to new claims 60-61; the 35 USC 112, first paragraph, written description rejection would be maintained for claims 42, 49-59, and newly applied to new claims 60-61.

Applicants state that claim 51 has been amended to recite the crystal effectively diffracts x-rays to a resolution of 1.5 angstroms to 3 angstroms. This is found unpersuasive in overcoming the 35 USC 112, first paragraph rejections as the claim encompasses other crystals besides those specifically enabled and supported in the specification (see previous Office action, pages 4- 8) through the use of open claim language "comprising" without mentioning the specific unit cell dimensions of the crystal to be claimed.

Applicants state that claims 42, 49, 50, and 52 have been amended to recite the crystal effectively diffracts x-rays to a resolution of 1.5 angstroms to 3 angstroms. Applicants also note the claims recite SEQ ID NO: 1. This is found unpersuasive in overcoming the 35 USC 112, first paragraph rejections as the claims encompass other crystals besides those specifically enabled and supported in the specification (see previous Office action, pages 4-8) without mentioning the specific unit cell dimensions of the crystal to be claimed.

Applicants state that claims 58 and 59 have been amended to recite SEQ ID NO: 1. This is found unpersuasive in overcoming the lack of written description rejection as the claims encompass other crystals besides those specifically enabled and supported in the specification (see previous Office action, pages 4-8) without mentioning the specific unit cell dimensions of the crystal to be claimed.

New claims 60 and 61 include new issues that would require further search.

The request for rejoinder will occur if the product claims become allowable.

Ardin H. Marschel
ARDIN H. MARSCHEL
PRIMARY EXAMINER 3/23/04